

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANDREW MILTON,	)	
	)	Case No. 2:16-cv-00554-RAJ
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
UNITED STATES INTERNAL REVENUE	)	
SERVICE,	)	
	)	
Defendant.	)	
_____	)	

This matter comes before the Court on the Government’s Motion for Reconsideration. Dkt. # 20. For the reasons that follow, the Court **GRANTS** the motion.

**I. BACKGROUND**

Plaintiff failed to file his income tax return in 2000. Plaintiff’s wife assumed power of attorney in 2014 and filed a late tax return to account for Plaintiff’s income tax liabilities in 2000. Dkt. ## 1 (Complaint) at 2-3, 17-1. The return claimed a refund for \$585,559.46. *Id.* The Internal Revenue Service (“IRS”) denied the refund, stating it was outside the statute of limitations. *Id.* Plaintiff then sued the IRS for this refund.

1 Defendant argued that Plaintiff filed his late return and refund claim in violation of  
2 26 U.S.C. § 6511(b)(2)(A) and therefore this Court lacked subject-matter jurisdiction  
3 over the claims. Dkt. # 12. Defendant moved the Court to dismiss Plaintiff's claims  
4 under Federal Rule of Civil Procedure 12(b)(1). The Court found that it had jurisdiction  
5 over the matter because Plaintiff met his burden under § 6511(a), concluding that §  
6 6511(b)(2)(A) was not a jurisdictional obstacle. The Government now moves the Court  
7 to reconsider this decision.

## 8 **II. LEGAL STANDARD**

9 Motions for reconsideration are disfavored and will be granted only upon a  
10 “showing of manifest error in the prior ruling” or “new facts or legal authority which  
11 could not have been brought to [the court’s] attention earlier with reasonable diligence.”  
12 Local R. W.D. Wash. (“LCR”) 7(h)(1).

## 13 **III. DISCUSSION**

### 14 **A. Plaintiff is outside the “look-back” period**

15 Having reviewed and reconsidered the Government’s previously cited cases, the  
16 Court finds that § 6511(b)(2)(A) is jurisdictional. *C.I.R. v. Lundy*, 516 U.S. 235, 240  
17 (1996) (finding that § 6511 “contains two separate provisions for determining the  
18 timeliness of a refund claim”—the filing deadline and the “look-back” period—that are  
19 jurisdictional prerequisites to bringing suit); *Reynoso v. U.S.*, 692 F.3d 973, 982 (9th Cir.  
20 2012) (though procedurally different from the instant suit, the court in *Reynoso* found that  
21 “§ 6511(b)(2)(A) is jurisdictional in nature and cannot be waived.”); *Zeier v. U.S. I.R.S.*,  
22 80 F.3d 1360, 1364 (9th Cir. 1996) (finding that § 6511(b)(2)(A) is jurisdictional).

1 Plaintiff filed two tax returns in 2014 for his income tax liabilities in 2000. Dkt.  
2 ## 12, 16. Plaintiff simultaneously claimed refunds for taxes he overpaid in 2000. Dkt. #  
3 1 (Complaint). However, § 6511(b)(2)(A)'s look-back period allows taxpayers to claim  
4 refunds for taxes paid within the three years immediately preceding the filing of the  
5 claim. 26 U.S.C. § 6511(b)(2)(A); *see also Reynoso*, 692 F.3d at 978 (“Thus, ‘[§ ]  
6 6511(b)(2)(A) provides that a claim for credit for an overpayment of tax may not be  
7 asserted for an overpayment which was paid more than 3 years [plus any allowed  
8 extension time] prior to the claim.’”) (quoting *Chemical Bank N.Y. Trust Co. v. U.S.*, 275  
9 F.Supp. 26 (S.D.N.Y. 1967)). By filing his return in 2014, Plaintiff could only seek  
10 refunds for overpayment of taxes he paid from 2011-2014. Plaintiff's claim is therefore  
11 outside the statutory period.  
12

13 B. Tolling under 26 U.S.C. § 6511(h)

14 Plaintiff alleges that he “suffered from a financial disability that made him unable  
15 to deal with financial or business matters” from 2000 to 2013. Dkt. # 1 (Complaint) at 2.  
16 He claims that he therefore falls within § 6511(h)'s tolling provision that suspends the  
17 time bar in § 6511(b)(2)(A) for individuals who are financially disabled. According to §  
18 6511(h), an individual is “financially disabled” if such individual:

19 is unable to manage his financial affairs by reason of a  
20 medically determinable physical or mental impairment of the  
21 individual which can be expected to result in death or which  
22 has lasted or can be expected to last for a continuous period of  
23 not less than 12 months. An individual shall not be considered  
24

1 to have such an impairment unless proof of the existence  
2 thereof is furnished in such form and manner as the Secretary  
3 may require.

4 26 U.S.C. § 6511(h)(2)(A). “An individual shall not be treated as financially disabled  
5 during any period that such individual’s spouse or any other person is authorized to act  
6 on behalf of such individual in financial matters.” 26 U.S.C. § 6511(h)(2)(B).

7 The Internal Revenue Service (IRS) sets forth the two requirements for claiming a  
8 financial disability under § 6511(h) in Revenue Procedure 99-21. The requirements  
9 include a written statement from a physician and a written statement from the taxpayer.  
10 Rev. Proc. 99-21, 1999-1 C.B. 960 (1999). To qualify as a physician under Revenue  
11 Procedure 99-21, one must be a doctor of medicine or osteopathy, a doctor of dental  
12 surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a  
13 licensed chiropractor. 42 U.S.C. § 1395x(r).

14 Plaintiff submitted a statement from Tim Liddle, a “MA, LMHC, MAC.” Dkt. #  
15 17. None of these designations qualify as a physician as defined by § 1395x(r).  
16 Moreover, Plaintiff’s cited authorities do not consider whether a statement made by  
17 someone who is not a physician, as that term is defined by § 1395x(r), is merely a  
18 technical deficiency or a fatal error. This Court finds it to be a fatal error. Congress  
19 deliberately drafted the definition of “physician” narrowly, and the Court will not disturb  
20 that decision. *Lai v. Ipson*, No. 1:09-CV-02086AWIGSA, 2010 WL 843259, at \*7 (E.D.  
21 Cal. Mar. 10, 2010), *report and recommendation adopted*, No. 1:09-CV-02086AWIGSA,  
22 2010 WL 2698515 (E.D. Cal. July 7, 2010), *vacated* (July 13, 2010), and *report and*  
23  
24  
25

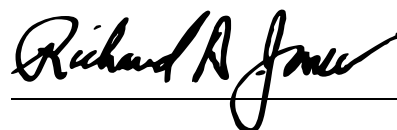
1 *recommendation adopted*, No. 1:09-CV-02086 AWI, 2010 WL 8911749 (E.D. Cal. Sept.  
2 7, 2010), *aff'd*, 474 F. App'x 595 (9th Cir. 2012) (finding that "Congress could have used  
3 more general language" when drafting § 6511(h) "but it chose not to.") (internal citations  
4 omitted). Accordingly, Plaintiff failed to satisfy his burden to show a financial disability  
5 under § 6511(h). The Court therefore lacks subject-matter jurisdiction over his claim for  
6 a refund.

7  
8 In its Motion to Dismiss, the Government argued that Plaintiff's claim for  
9 wrongful levy should be incorporated into his first claim. Dkt. # 12 at 12-13. Plaintiff  
10 states that he "has no issue with this action." Dkt. # 16 at 2. Therefore, if Plaintiff  
11 concedes that his second claim should be styled as one for a refund, then this claim fails  
12 for lack of subject-matter jurisdiction under the same analysis performed above. Finding  
13 it lacks subject-matter jurisdiction over Plaintiff's claims, the Court **GRANTS**  
14 Defendant's motion to dismiss. Dkt. # 12.

#### 15 **IV. CONCLUSION**

16 Having revisited the briefing, the Court finds that manifest error would result in  
17 not reconsidering its prior ruling. Therefore, the Court **GRANTS** Defendant's motion for  
18 reconsideration. Dkt. # 20. Upon reconsideration, the Court **GRANTS** Defendant's  
19 motion to dismiss for lack of subject-matter jurisdiction. Dkt. # 12.

20 Dated this 14th day of June, 2017.

21  
22 

23 The Honorable Richard A. Jones  
24 United States District Judge